

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Anarafena Medical PLLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1294-1135
Applicant's File No.	133234
Insurer's Claim File No.	8762651870000001
NAIC No.	35882

ARBITRATION AWARD

I, Camille Nieves, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: Eligible Injured Person (NA)

1. Hearing(s) held on 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Edilaine D'Arce from Law Offices of Eitan Dagan participated virtually for the Applicant

Elba Iris from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$6,753.51**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute to \$5564.00.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Applicant seeks reimbursement for right shoulder surgery performed on 2/21/23 on the EIP, a 37 year old female pedestrian, following a motor vehicle accident on 12/15/22. The charges were denied based on a peer review by Dr. Mukund Komanduri dated 3/24/23 based on lack of medical necessity. A rebuttal is submitted by Dr. Durant.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for right shoulder surgery performed on 2/21/23 on the EIP, a 37 year old female pedestrian, following a motor vehicle accident on 12/15/22. The charges were denied based on a peer review by Dr. Mukund Komanduri dated 3/24/23 based on lack of medical necessity.

The peer reviewed the pertinent records and states the EIP was a 37 year old female pedestrian evaluated on 12/28/22 for shoulder pain. On exam there was tenderness and decreased range of motion. Conservative treatment was recommended. Physical therapy was performed from 12/28/22 to 2/27/23.

On 12/29/22 Dr. Reyfman was seen for left shoulder pain. On exam there was tenderness and decreased ROM. Impingement syndrome was diagnosed and therapy was recommended. On 1/17/23 she was seen again for the neck, back and right shoulder. On 1/19/23 she was seen for left shoulder pain and diagnosed with rule out rotator cuff injury. On 1/25/23 she was seen by a NP for right shoulder pain. On exam there was tenderness, decreased ROM and positive orthopedic tests. Partial rotator cuff tear/internal derangement was diagnosed. Therapy was continued. Surgery was recommended and performed on 2/21/23.

The peer states the surgery was unnecessary /23 for repair of SLAP tear, labral tears, rotator cuff tears, biceps tendon tear and chondral lesion, lysis of adhesions, extensive synovectomy and extensive bursectomy.

The peer states that non-operative management of tears does not always result in satisfactory outcomes. Rotator cuff repairs have good clinical outcomes and this claimant suffered a right shoulder injury with MRI indicative of a tear however surgery was recommended within two months of injury. Three to six months of treatment should have been attempted first. Therefore, surgery was preemptive and not necessary.

I find the peer inadequate to demonstrate lack of medical necessity factually and medically. The peer concedes a right shoulder injury and tear which has good clinical outcomes with surgery. The only point raised by the peer is that therapy was only two months when three months should be attempted.

This is admittedly a guideline which a surgeon and patient deemed inadvisable according to the rebuttal by Dr. Durant, the surgeon, considering the pain levels and injury which may worsen with additional treatment or not improve. This is a matter left to the judgement of the surgeon.

The remaining charges were paid at the fee schedule rate of 80% for a Nurse Practitioner (2/13/21) or appropriately denied based on the Global Surgical package (2/21/21).

The surgery was medically necessary under the circumstances and the charges are awarded for the surgery including the assistant PA in the amount of \$6616.84.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**
- The policy was not in force on the date of the accident
 - The applicant was excluded under policy conditions or exclusions
 - The applicant violated policy conditions, resulting in exclusion from coverage
 - The applicant was not an "eligible injured person"
 - The conditions for MVAIC eligibility were not met
 - The injured person was not a "qualified person" (under the MVAIC)
 - The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
 - The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Anarafena Medical PLLC	01/25/23 - 02/21/23	\$6,753.51		Awarded: \$5,564.00
Total			\$6,753.51		Awarded: \$5,564.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/06/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the date of filing at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Pursuant to 11 NYCRR 65-4.6, 20% of the amount of first party benefits, plus interest thereon, subject to a maximum of \$1360.00.

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of FL
SS :
County of Osceola

I, Camille Nieves, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

12/31/2023
(Dated)

Camille Nieves

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
c58bf501f9be795deb18e1d57676ea83

Electronically Signed

Your name: Camille Nieves
Signed on: 12/31/2023